

1 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

19 CR 575 (FB)

4 versus

U. S. COURTHOUSE  
225 Cadman Plaza East  
Brooklyn, New York

5 RENATO BARCA, et al

6 DEFENDANTS.

January 16th, 2020  
2:30 p. m.

7 -----X

8 CRIMINAL CAUSE FOR STATUS CONFERENCE  
9 BEFORE THE HONORABLE FREDERIC BLOCK  
UNITED STATES DISTRICT JUDGE

10  
11 APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript  
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1 THE CLERK: Criminal Cause for a Status Conference,  
2 United States of America versus Barca.

3 I ask all the parties if you could state your  
4 appearances for the record.

5 MR. EDELMAN: Good afternoon, Your Honor. Keith  
6 Edelman and Kayla Bensing for the United States.

7 THE COURT: All right. Who's going to go in order?

8 MR. MONTELEON: Go down the order, Judge?

9 MR. EDELMAN: I'll also note at counsel's table is  
10 Michael Ilaria and Celine Ferguson from Pretrial.

11 MR. ILARIA: Good afternoon, Your Honor.

12 MS. FERGUSON: Good afternoon, Your Honor.

13 MS. MADRIGAL: Good afternoon, Your Honor. Melissa  
14 Madrigal on behalf of Renato Barca.

15 MR. MAZUREK: And good afternoon, Your Honor. Henry  
16 Mazurek and Ilana Haramati on behalf of Andrew Campos, who is  
17 present in court in the first row in front of the gallery.

18 MR. WALLENSTEIN: Good afternoon, Your Honor.  
19 John Wallenstein on behalf of George Campos. Mr. Campos is in  
20 the back row, way in the corner, hiding from me.

21 MR. GELARDI: Good afternoon, Your Honor. Vince  
22 Gelardi on behalf of James Ciaccia. He is likewise in the  
23 courtroom, in the third row.

24 MR. MONTELEON: Good afternoon, Your Honor. James  
25 For defendant, Benito Dizenzo, who is in the courtroom, Your

1 Honor, in the back.

2 MR. DIGIANSANTE: Good afternoon, Your Honor.

3 Lawrence DiGiansante appearing for Mr. Vincent Fiore, who is  
4 also seated in the audience.

5 THE COURT: All right. And last but not least --

6 MR. MAZUREK: Oh, there's more than that.

7 MR. BOOTH: Christopher Booth for Mr. Mark Kocaj,  
8 who is right there in the courtroom.

9 THE COURT: I keep forgetting the numerosity here.  
10 That's eleven?

11 MR. EDELMAN: There's 11.

12 MR. SERCARZ: Last and perhaps least, Your Honor,  
13 Maurice Sercarz for the defendant, Richard Martino, who is  
14 present in the courtroom.

15 MR. COLTON: Actually not last, Your Honor. Glenn  
16 Colton for defendant, John Simonlacaj, who is also present in  
17 the courtroom. Good afternoon.

18 MR. DIETSCH: Good afternoon, Your Honor. Craig  
19 Dietsch on behalf of the defendant, Frank Tarul, standing in  
20 the back, where they were.

21 THE COURT: Okay.

22 MS. SHARKEY: And Judge, last, Kelley Sharkey for  
23 Michael Tarul, who is in the back, right to the right, who's  
24 standing.

25 THE COURT: All right. Everybody, please be seated.

1 I guess the good news is I haven't gotten any  
2 information about anybody being in violation of their terms of  
3 release, but let me hear from the Government.

4 Mr. Edelman, give me a rundown since we were last  
5 here. These folks, I assume they all have been have been  
6 compliant, because I know that we had a lot of discussions  
7 about our concern in that respect, so I would like to hear  
8 from you.

9 MR. EDELMAN: Yes, Your Honor.

10 As to the bail condition that Your Honor has set,  
11 to date -- which this is since December 5th, when most of the  
12 defendants were arrested and released or after that point --  
13 we haven't had any violations of supervised -- of pretrial  
14 release at this time.

15 THE COURT: Well, I'm glad to hear that.

16 Now, I know when I was last here, we did grant bail  
17 to Campos, Jr. and so I'm particularly concerned about that,  
18 because that was the one where we had a reverse -- or not  
19 reverse. We had new information with the magistrate judge's  
20 determination. All the others, I think had been given bail by  
21 a magistrate judge, if I remember correctly.

22 MR. EDELMAN: That's almost correct. At that point,  
23 everyone except for Mr. Campos and Mr. Fiore had been  
24 released. After that point, Mr. Fiore was ordered released by  
25 Judge Bloom. I believe it was last week or two weeks ago.

1 THE COURT: All right. That wasn't me. That was  
2 Judge Bloom who did that?

3 MR. EDELMAN: Correct.

4 THE COURT: All right. And I was particularly  
5 concerned with how Andrew Campos has been behaving, because  
6 that was a matter of some debate we had as to whether the  
7 Government, you know, had legitimate serious concerns about  
8 whether he would be confined. So I'm glad to hear that.  
9 Apparently, you've heard nothing contrary?

10 MR. EDELMAN: At this point, we have heard nothing  
11 contrary. Defense counsel has given us access to the video  
12 surveillance system outside the home. I note Mr. Campos is  
13 electing not to use any electronic devices, and just wanted to  
14 use his landline during the pendency of the case --

15 THE COURT: Right.

16 MR. EDELMAN: -- which of course, we cannot monitor.  
17 So there is no monitoring of his electronic devices because he  
18 is not using any.

19 THE COURT: My sense is that he has every incentive  
20 to be compliant. So I'd just like to check on that. Okay?

21 Now, we have three matters here that we have to  
22 discuss today, if they are still viable. I've made a note of  
23 it.

24 We have Richard Martino's Motion to Amend the  
25 Protective Order. Mr. Sercarz is going to be speaking about

1 that. We have the request for modification of Andrew Campos'  
2 bail conditions so he can meet with his father without counsel  
3 present. And then we have this issue -- I don't know if it is  
4 still is viable, about the unsealing of the relation letter.

5 And of course, everybody else is here, and I'm  
6 willing to listen to any concerns that anybody else may have,  
7 but that's what I have on my agenda. If there is anything  
8 else we need to discuss other than those three matters, maybe  
9 we can take care of that first. Okay?

10 MR. EDELMAN: I think it makes sense to take care of  
11 those three first. I have some more housekeeping matters we  
12 can address then.

13 THE COURT: The rest will be housekeeping matters?

14 MR. EDELMAN: Yes, I think so.

15 THE COURT: Oh, so let's deal with that.

16 I don't know whether Mr. Mazurek really is concerned  
17 about the motion to unseal the relation letter or not. Let me  
18 hear from you.

19 MR. MAZUREK: Yes. Thank you, Judge.

20 Your Honor, my understanding is that, obviously, the  
21 case has been determined to be randomly selected, that you're  
22 assigned --

23 THE COURT: I've been randomly selected. There's no  
24 question about that.

25 MR. MAZUREK: Yes. And that the relation letter did



1 not result in a change --

2 THE COURT: Right.

3 MR. MAZUREK: -- in who was in your random selection  
4 as the presiding judge in the case. Nonetheless, Your Honor,  
5 I still think under, as indicated in our letter, under Local  
6 Rule 50.3.2(c)(2), that the Government is to promptly -- the  
7 parties may promptly move to unseal the notice once the need  
8 for ex parte and under seal filing no longer exists.

9 The Government has indicated in very broad stroke  
10 that those concerns still remain with respect to the totality  
11 of that letter. Your Honor, I think there is a clear need  
12 for, under public transparency and fairness, to unseal that  
13 letter to the extent that it does not contain information that  
14 would be somehow affecting the privacy interests or the  
15 Government's interests in --

16 THE COURT: So let me assuage your concerns. All  
17 right? First of all, I assume you don't want me to reassign  
18 this case to Judge Cogan?

19 MR. MAZUREK: I'm very happy to be where I am, Your  
20 Honor.

21 THE COURT: You didn't have to say that.

22 And I can understand why good counsel would want to  
23 gather all the information that he or she can get his or her  
24 hands on that could bear upon the case.

25 So I have read the retention letter. All right?

1 And I can tell you I'm going to leave it stay exactly the way  
2 it is for good and sufficient reasons. And I don't want to go  
3 into it any further. I don't think it's appropriate to do so.

4 I just want to assuage your concerns that I didn't  
5 take the Government's representation at face value. I also  
6 read it carefully. I think the application to keep it all  
7 under seal at the present time is appropriate. So I just want  
8 to let you know that.

9 MR. MAZUREK: Judge, would there be one exception to  
10 that, since the -- I guess the letter itself was relating to  
11 cases that have been previously assigned and are public  
12 indictments with respect to assignments to Judge Cogan. To  
13 the extent they are, I would ask that those cases be known to  
14 us as relevant information or material that could be relevant  
15 to assist us in the preparation of the defense.

16 THE COURT: Mr. Edelman, you have all these cases  
17 that have been filed, have been filed. But let me hear from  
18 you.

19 MR. EDELMAN: First, I note, Your Honor, that the  
20 relation issue, as Your Honor noted, is moot at this point.  
21 So there is no need for obtaining that letter and there's no  
22 relief to be granted at this point.

23 As to Mr. Mazurek's latest request --

24 THE COURT: They want to get their hands on  
25 everything that could possible contain information that might

1 be useful to them.

2 MR. EDELMAN: I don't doubt their intentions, but  
3 the other cases that were filed were filed under seal --

4 THE COURT: Under seal?

5 MR. EDELMAN: -- pursuant to orders issued by a  
6 judge, for reasons that were set forth to that judge and --

7 THE COURT: Right.

8 MR. EDELMAN: -- as part of those orders and as part  
9 of the Government's submission of its relation letter under  
10 seal, we always state that when the need for sealing no longer  
11 exists, we will go and request unsealing. But at --  
12 particularly at this early stage of the case, we believe those  
13 orders should stay.

14 THE COURT: Or monitoring it.

15 So we'll just keep it as it is at the present time.  
16 I understand the tensions between the parties. There is good  
17 reasons by both sides to make their positions heard on the  
18 record, and I understand that.

19 In any event, that's the current status and we'll  
20 monitor it as we go along. At the present time, things will  
21 stay the way they are. Okay?

22 The last thing -- well, let's take Mr. Martino's  
23 motion.

24 Mr. Sercarz, you want to change the protective order  
25 which you agreed to, and the five, six, seven or the other

1 defendants agreed to. It's overstating. I see these  
2 protective orders all over the place. Why should I make an  
3 exception in your case?

4 MR. SERCARZ: Your Honor, I'm speaking for myself  
5 and I believe on behalf of the other attorneys who signed the  
6 protective order and who joined in seeking to amend some of  
7 its terms, and who joined me in seeking to amend some of its  
8 terms.

9 I will tell you this: I signed the order as -- with  
10 the understanding that signing the order was a precondition of  
11 obtaining discovery from the Government. Number two, I signed  
12 it without knowledge of the nature of the discovery, the  
13 volume of the discovery or the manner in which the Government  
14 was going to designate the discovery as falling into one of  
15 the two protected categories. When I --

16 THE COURT: I'm not going to preclude --

17 MR. SERCARZ: -- came to appreciate the volume of  
18 discovery and the nature of some of the discovery in this  
19 case, I contacted Mr. Edelman right away. I informed him of  
20 my objections. I endeavored to negotiate changes in the  
21 language of the order, and it was when Mr. Edelman declined my  
22 invitation to change the order that I told him I would be  
23 raising these objections, and in order that he not feel  
24 blindsided -- and I believe he'll back me up on this -- I told  
25 him not to serve me with the discovery directory or any of the

1 discovery, so he wouldn't feel that by signing the order and  
2 then arguing as to its content might prejudice him in any way.

3 THE COURT: Let me give you some comfort. I am not  
4 at all suggesting that it's inappropriate for you to make this  
5 application. Things happen as we move along --

6 MR. SERCARZ: Fair enough.

7 THE COURT: -- in preparing for a defense, and I  
8 understand that you are in receipt of information which you  
9 may not have had when you signed the protective order. So I'm  
10 not precluding it.

11 But let's get to the heart of it. If I see this  
12 correctly, your concern is that it's too burdensome for you to  
13 be saddled with all this information at your office, I guess,  
14 and you want to have your client have access to this  
15 information so you don't have to be under that type of  
16 pressure. Am I reading that wrong?

17 MR. SERCARZ: Frankly, it's more than that, and I'd  
18 like to put it in another form -- and before I explain my  
19 concerns, Your Honor, those concerns that caused me to doubt  
20 my decision in signing it -- let me give two hypotheticals,  
21 Your Honor, which are likely to occur in a case such as this.

22 We get either transcripts or and/or tape recordings  
23 in this case that are designated in the restrictive confines  
24 of the witness-protected discovery material category. It  
25 emerges that the participant in the conversation other than

1 this defendant is prepared to talk to us about the content of  
2 that recording.

3           So I do or one of the other attorneys in this room  
4 does what any good defense attorney would want to do: Make  
5 the appointment, we go down, and we're prepared to discuss  
6 with that individual the conversation that he engaged in with  
7 our client.

8           We go with an investigator who can record accurately  
9 what the witness says. When we ask him about the  
10 conversation, the context, the meaning of terms, and in order  
11 to refresh his recollection, we desire to copy, photocopy the  
12 transcript of the conversation in order to refresh his  
13 recollection. We're precluded from engaging in that  
14 photocopying process by the restrictive category that the  
15 Government has confronted us with here.

16           If we want to give -- never mind our investigator --  
17 copying it for the benefit of the investigator is a violation.  
18 If we want to give a copy to the witness, that is a further  
19 violation.

20           I respectfully submit, Your Honor. I've been around  
21 the block a few times in the courthouse --

22           THE COURT: I like your choice of words.

23           MR. MAZUREK: No pun intended. No pun intended.

24           MR. SERCARZ: I've signed a few of these orders,  
25 Your Honor, but this Court has also a wealth of experience at

1 its disposal.

2 THE COURT: What exactly do you want specifically?  
3 You want a copy the transcript?

4 MR. SERCARZ: The first provision of this order says  
5 we're not allowed to use these materials in anyway other than  
6 to prepare our cases for trial.

7 The more limited protected category says that we are  
8 limited to sharing it with our investigator, with co-counsel,  
9 and if we need to share it with anyone else, we can do so if  
10 they sign the order -- for example, an investigator and the  
11 like -- bind us by the categories of the less restrictive  
12 confines --

13 THE COURT: Mr. Sercarz, let's be very focused and  
14 real.

15 MR. SERCARZ: I'm trying.

16 THE COURT: You want copies? You want to have  
17 copies -- is what you've told me -- of the wiretap  
18 transcripts, right? You want to go over and make copies of  
19 them and show them to your client? I think that was what you  
20 just told me?

21 MR. SERCARZ: Yes.

22 THE COURT: Okay. Well, let's start there. Let's  
23 start with that. You want to be able to copy it, to show them  
24 to your client when you visit with your client and discuss the  
25 case with him?

1 MR. SERCARZ: And -- and given the wealth of  
2 material in this case, I'd like my client -- who is confined  
3 to his home when he's not in my office -- to be permitted to  
4 take the copies home with him with the understanding that  
5 disseminating them any further would be a violation of his  
6 bail conditions and a violation of the order.

7 THE COURT: Okay. Listen, Mr. Edelman, I think what  
8 he wants, as a practical matter -- maybe I have it wrong -- he  
9 said when he meets with his client, he wants to be able to  
10 show him something tangible. I don't understand that. It  
11 seems since he has the wiretaps, he wants to make a copy of  
12 this? I don't get it.

13 MR. EDELMAN: I want to be clear that there are two  
14 categories of material, wiretaps --

15 THE COURT: Right.

16 MR. EDELMAN: -- and oral communications.

17 THE COURT: Right.

18 MR. EDELMAN: The vast majority of the documents are  
19 not at issue. The Government is allowing the wiretaps and  
20 those oral communications to be possessed by the defendants in  
21 their own home. That is not what we're talking about.

22 We're talking about a limited subset of the most  
23 sensitive information which reveals the Government's  
24 witnesses, and the majority of that limited category are  
25 consensual recordings. We do hear and very often, it is



1 obvious to determine who the Government's cooperating witness  
2 is during the course of that tape recording. It is that very  
3 limited portion that we're seeking these extra protections  
4 over.

5 THE COURT: Well, what kind protection are you  
6 talking about, redaction here?

7 MR. EDELMAN: We're asking -- and this is a  
8 provision that is entered in many different cases and  
9 particularly, cases such as these -- we were asking that those  
10 recordings not be allowed to be possessed by anyone other than  
11 defense counsel.

12 So if the defendant wants to hear them, he can go to  
13 defense counsel's office or vice-versa, and can listen to them  
14 and review those materials.

15 THE COURT: How extensive is this?

16 MR. EDELMAN: So these consensual recordings -- I'll  
17 first note and we put this in our letter of response --  
18 Mr. Martino is not on any of these recordings. Many of the  
19 other defendants are, but at least as to Mr. Martino, he's  
20 not.

21 THE COURT: It still could be relevant.

22 MR. EDELMAN: It could be relevant.

23 We have estimated there is -- it's a large number.  
24 It's approximately 105 hours of consensual recordings, plus  
25 documents, applications that reveal the Government's

1 witnesses, et cetera.

2 THE COURT: All right. So now -- so I understand  
3 that. The defendant can have access and listen to that at  
4 counsel's office, is the way it presently is, right?

5 MR. EDELMAN: Correct.

6 THE COURT: And counsel is saying that is very  
7 burdensome to them to be able to manage that. Is there a  
8 better way of doing that? I think that's what they're saying.

9 MR. EDELMAN: I understand that, and we're trying to  
10 be reasonable wherever we can, but this is at the heart of the  
11 most sensitive material the Government has.

12 And to allow a disc to go out the door to a  
13 defendant, to an investigator, to -- but particularly to a  
14 defendant, that disc can go anywhere from that point. This is  
15 a condition that is often imposed on defendants who are even  
16 in custody.

17 THE COURT: It makes some sense to me that if you  
18 have a hard copy of things that could be distributed, you  
19 know, throughout the world, theoretically, I could understand  
20 why that's not a good idea.

21 At the same time, it's a balance and certainly,  
22 counsel is entitled to have that information, and because this  
23 is too burdensome, it would require the defendant -- who is  
24 entitled to look at it also -- to have to do it in counsel's  
25 office. I don't know exactly what they want. I'm not going

1 to require you to make copies and distribute them. Okay?

2 But you have a concern about the fact that it's  
3 going to be burdensome to do this in your office, I think,  
4 right?

5 MR. SERCARZ: The limitation is that my client can  
6 have access of any sort of the material only when he is in my  
7 office? Yes, it's burdensome for two reasons, and  
8 Mr. Edelman --

9 THE COURT: Well, what do you want? I mean, you  
10 have the information. It's in your office. He's there with  
11 you. He can stay there all day. You can have associates  
12 there with him. I don't get why it's a problem.

13 MR. SERCARZ: It's burdensome in several respects.

14 There are hundreds and hundreds of hours of tapes.  
15 In order for my client or any one of these defendants to be  
16 able to assist us by providing us, as I've said in the letter,  
17 not only with a quick listen to the tapes, but with the words  
18 used, the nuance and meaning, the meaning of any code, the  
19 meaning of any shorthand terms, they need to listen to these  
20 tapes over and over again.

21 THE COURT: Let me ask you this. Is there anything  
22 that would preclude him from writing down anything that he  
23 listens to?

24 MR. SERCARZ: No.

25 MR. EDELMAN: The order as written and as entered

1 has the restrictions over the material as well as any copies,  
2 notes, documents or other information derived from.

3 THE COURT: This is what he's talking about. He  
4 says you have a lot of material. Even if it's going to be all  
5 listened to at defense counsel's office, it's kind of hard to  
6 remember it all, and how would the defendant have the  
7 opportunity to really understand what's on that, and to review  
8 it and to think about it if he doesn't have any access to it  
9 except when he comes to the office and he has to look at  
10 hundreds and hundreds of pages?

11 MR. EDELMAN: He can do so there. I note to the  
12 extent that the office has some problems, if a paralegal or  
13 associate even goes to the defendant's home, as long as that  
14 person is in custody of the material.

15 MR. MAZUREK: Who's going to pay for that? Who's  
16 going to pay for having people go to --

17 MR. EDELMAN: I'm sorry. But what's really  
18 problematic is that we can't allow this sort of material that  
19 is the most sensitive to just be taken by defendant and on his  
20 drive home, if he meets -- someone meets with him, if he goes  
21 home, if he gives it to someone to give out, there are a  
22 myriad of possibilities -- and this is a condition that's  
23 imposed on people who are even in custody.

24 THE COURT: Is the lawyer allowed to make notes?

25 MR. EDELMAN: Yes. Absolutely. They're allowed to

1 make notes. The lawyer has to maintain possession.

2 THE COURT: Is the defendant allowed to see the  
3 lawyer's notes?

4 MR. EDELMAN: Yes. Those notes -- that is allowed  
5 under the order. They just have to be kept in the lawyer's  
6 office.

7 THE COURT: So notes could be taken?

8 MR. EDELMAN: Correct, Your Honor.

9 THE COURT: And whether it's the lawyer who writes  
10 the notes, the defendant who writes the notes --

11 MR. EDELMAN: Correct.

12 THE COURT: -- anybody else, they just have to stay  
13 in the office, and they can't go back with the defendant?

14 MR. EDELMAN: Correct.

15 THE COURT: What's wrong with that?

16 MR. SERCARZ: Your Honor, take it to the next step.  
17 What about an investigator? Everyone here is going to make  
18 use of an investigator in trying to assist them in handling  
19 this case. The investigator is not allowed to take them.

20 THE COURT: Is the investigator allowed to come to  
21 the lawyer's office to look at the notes the lawyer has?

22 MR. EDELMAN: Yes, Your Honor. He cannot take them  
23 and go out with them.

24 THE COURT: They could look at his notes?

25 MR. EDELMAN: Correct.

1           THE COURT: They're not going to be taking -- note  
2 taking. We are not going to preclude anybody from having  
3 access to those notes. The issue is whether they can leave  
4 the office of the lawyer.

5           MR. SERCARZ: I understand. The operative word the  
6 Government uses is "dissemination" with regard to their more  
7 restrictive type of protected material.

8           Let's go back, if you don't mind, Your Honor, to the  
9 hypothetical with which I began my comments. We want to  
10 confront one of the witnesses to this conversation with what  
11 they said to refresh their recollection and find out why they  
12 said it --

13          THE COURT: You'll have those notes. You'll have  
14 all those notes. You can talk to those witnesses. You can  
15 refer to your notes. You're allowed to do that.

16          MR. MAZUREK: Can I just add --

17          MR. SERCARZ: Even copying -- even copying portions  
18 of a transcript for the purpose of having the investigator  
19 present and knowledgeable about the conversation is  
20 dissemination. Showing the witness the transcript is  
21 dissemination. And I respectfully submit, Your Honor, this is  
22 reaching the stage where it violates due process, particularly  
23 --

24          THE COURT: Mr. Mazurek, you want to speak also?  
25 You are chomping at the bit, and I'm going to allow you to

1 interrupt Mr. Sercarz.

2 MR. SERCARZ: Is this a reflection of my argument so  
3 far?

4 MR. MAZUREK: Judge, I just want to put this into a  
5 little bit clearer perspective. We're not saying that the  
6 standard protective order is not appropriate. It is. And  
7 those protections are pretty severe. They come in every case.

8 And every client has to sign this. Everyone in our  
9 staff has to sign it. Every investigator has to sign it. If  
10 it's violated, then you have the ability to hold that person  
11 in contempt of court.

12 Paragraph three is just an additional set of  
13 restrictions that I believe are just too burdensome and hard  
14 to really understand what we're even allowed to do, when it's  
15 not necessary to protect the information.

16 THE COURT: Those restrictions are that nobody is  
17 allowed to take any of the papers out of the lawyer's office.

18 MR. MAZUREK: Yes. I'll throw a wrinkle to this,  
19 Judge. In today's age, I don't even write on pieces of paper  
20 anymore. I write on computers.

21 And I could access my computer on copies or I  
22 download it on it my laptop and bring it home with me. Am I  
23 not permitted to do that? Am I not allowed to remotely access  
24 my firm's FTP site, which has copies of materials from  
25 wherever I am, in order to prepare the case?

1 THE COURT: Well, with modern technology, I would  
2 think you don't have to be a scrivener, but you should be able  
3 to use your laptop.

4 Mr. Edelman?

5 MR. EDELMAN: There is no objection to that. The  
6 restriction is on, as Mr. Sercarz said, dissemination beyond  
7 defense counsel, defense staff.

8 So he cannot take the -- he can go -- Mr. Mazurek  
9 can home go home with his computer and work all night if he  
10 would like. He can't take those notes and send them off to  
11 someone or print them out and give them to someone.

12 THE COURT: He doesn't necessarily have to be wedded  
13 to the office. He can take the notes home.

14 MR. MAZUREK: And that's all I'm asking for, is that  
15 my client has that same opportunity, Your Honor.

16 MR. EDELMAN: Well, that's a big difference, and  
17 that's what we're concerned about.

18 MR. MAZUREK: Because the truth is, in order for us  
19 to --

20 THE COURT: Let me understand this. So you have  
21 your notes on your laptop. You're meeting with your client.  
22 I assume you guys know your client.

23 MR. MAZUREK: I just want my client to be able to  
24 review the 2600 conversations at where he is located, where he  
25 has to stay for 24 hours a day on home detention. He might as



1 well do work while he's there, as opposed to having to come to  
2 my office. I have got to notify Pretrial Services --

3 THE COURT: And I get it. The reason why --

4 MR. MAZUREK: The reason why?

5 THE COURT: Mr. Edelman wants him to come to your  
6 office is so there is nobody at home who could otherwise have  
7 access to that information.

8 MR. MAZUREK: But the information -- but Your Honor,  
9 this is what the crazy thing in my mind is. The information  
10 is known once it's looked at. It doesn't prevent anyone from  
11 telling someone this is what the information says.

12 All you're doing is putting a burden on the defense  
13 lawyers to have to find resources to have the person in our  
14 office at particular times in order to review the material,  
15 and it is a burden on their ability to help me prepare for the  
16 defense at trial.

17 THE COURT: Well --

18 MR. MAZUREK: And it's a huge amount of material.  
19 So I don't understand what additional value that the  
20 Government gets by not letting me have my client --

21 THE COURT: What else do you want? You want  
22 somebody to come to your client's home with the information  
23 and have him look at it?

24 MR. MAZUREK: Judge, he has a laptop. There's a  
25 laptop. And by the way, his bail conditions allow him to have

1 a laptop. We could give it to Pretrial Services. They could  
2 put their soft -- spy software on it, so they'll know exactly  
3 what he's doing with it -- and at that point in time, he can  
4 sit and review it, take his notes, and then we can have a  
5 meeting that's productive.

6 THE COURT: You want him to come to your office with  
7 his laptop, take all those notes, and go home with them,  
8 right?

9 MR. MAZUREK: What's that? I'm sorry?

10 THE COURT: You want him to come to your office  
11 with his laptop and take all the notes and put them on --

12 MR. MAZUREK: I want him to come to my office with  
13 his laptop, as I upload all of the discovery in the case. He  
14 goes home, where he's forced to stay 24 hours at a time, and  
15 review the material on his phone, take his own notes and bring  
16 them to my office, so we could have a productive meeting and  
17 discussion about that.

18 THE COURT: Well, what's wrong with that?

19 MR. EDELMAN: First of all, it's not as if the  
20 defendant is home 24 hours day with nothing to do. He can  
21 listen to every single wiretap.

22 THE COURT: What is wrong with that? He just wants  
23 to be able to communicate what defense counsel will put down  
24 on his laptop, the notes that the defense counsel makes.

25 MR. MAZUREK: And under my client's bail conditions,

1 it has to -- the spy software from Pretrial Services will be  
2 on it. So they'll know exactly what he's doing on the laptop.

3 MR. EDELMAN: I don't think -- and I could be  
4 corrected -- I don't think this, quote, spy software can just  
5 detect any kind time -- any time a CD is burned or anything  
6 like that. It certainly can't detect if someone else happens  
7 to be at home and is there. Certainly doesn't -- and can view  
8 this material. I don't think it detects whether something is  
9 printed from this computer.

10 This spy software that is spoken about -- and again,  
11 we have Pretrial here -- but I don't think it could guarantee  
12 that there are no copies to be made from this. Once you get  
13 beyond defense counsel, there is a huge risk that the hard  
14 evidence can be distributed out.

15 And we're -- again, we're really trying to  
16 understand the burdens imposed and trying to find a middle  
17 ground. It's a limited subset of this material.

18 MR. MAZUREK: And the middle ground is the standard  
19 protective order that is on all of the other paragraphs of  
20 this protective order other than paragraph three.

21 We agreed to the others. Just paragraph three  
22 should be excised and the standard order that's always entered  
23 in this courtroom and in the Southern District of New York  
24 that is entered, as that is a fair balance between the  
25 Government's interest of concerns of dissemination of

1 material, and our ability and our client's due process rights.

2 THE COURT: Okay. Run that by me again?

3 MR. MAZUREK: Right.

4 THE COURT: You're specifically going to put  
5 information on your laptop, and then you're going to share  
6 that with your client, right?

7 MR. MAZUREK: Yes.

8 THE COURT: And you want it to be on his laptop?

9 MR. MAZUREK: Yes. We should have the same thing.  
10 We should be working off the same thing.

11 THE COURT: Just one second. Just one second. I  
12 just want to be very concrete. So it's not just on your  
13 laptop. It's going to be on his laptop, right?

14 MR. MAZUREK: Yes.

15 THE COURT: So if he gave -- Mr. Mazurek gave his  
16 client his laptop, you think you can roll with that?

17 MR. EDELMAN: Sorry? If Mr. Mazurek gave the client  
18 his laptop -- Mr. Mazurek's laptop?

19 MR. MAZUREK: No, I've got a lot of stuff on my  
20 laptop. I'm not sharing it with my client.

21 THE COURT: Well, I mean, what difference does it  
22 make whether it's on Mr. Mazurek's laptop or his own laptop?

23 MR. EDELMAN: It's not the device that is  
24 necessarily the issue. It's the possession. So whose laptop  
25 it is, it's the defendant going home with extremely sensitive

1 material on his own, essentially able to do whatever he would  
2 like. That is the Government's concern.

3 THE COURT: If he's going to have that information  
4 anyway --

5 MR. EDELMAN: Information? Yes. But there's a big  
6 difference, Your Honor, between knowing something and being  
7 able to show it, have a tape that can go out into the  
8 community, and that voice goes around, and then it's -- the  
9 risk to a witness is exponentially increased.

10 The hard evidence -- and we've cited one case which  
11 explains the distinction -- having hard evidence, something to  
12 wave around and show -- this person has cooperated with the  
13 Government -- is at increased -- greatly increased risk.

14 And so for wiretaps, all the other evidence, we're  
15 happy to let them review it at home, but --

16 THE COURT: But he's going to have information in  
17 any event because Mr. Mazurek is going make it available to  
18 him.

19 MR. EDELMAN: He will be able to listen to and know  
20 that information. What he will not able to, we submit, is  
21 have a hard copy, whether it's a hard disc copy or a hard  
22 paper copy that can then go who knows where.

23 THE COURT: Okay. This distinguished gentleman  
24 wants to say something now, otherwise, he would not be  
25 standing there.

1 MR. BOOTH: Correct, Your Honor. Christopher Booth  
2 for Mr. Kocaj.

3 There is one other restriction that I find is  
4 unreasonable with respect to --

5 THE COURT: Beyond this one now?

6 MR. BOOTH: Yes, Your Honor. It's related to it,  
7 but it's an additional one.

8 It says that counsel cannot share with each other  
9 this information in this protected class. So if I listen to a  
10 conversation that involves a co-defendant and some other third  
11 party, we can figure out who the witness is. I can't confer  
12 with Mr. Mazurek or anyone else to find out what they know  
13 about this participant.

14 THE COURT: What do you say about that, Mr. Edelman?  
15 Seems like the lawyers should be able to talk to each other.

16 MR. EDELMAN: I'm not sure that's the reading of  
17 this paragraph.

18 THE COURT: Let's make it definitive so that it's  
19 clear today. My guess is that the lawyers should be able to  
20 chat with each other about conversations.

21 MR. EDELMAN: We don't object to one lawyer calling  
22 another lawyer and saying, hey, on tape number five, this  
23 thing is there. What do you think? That -- and I don't  
24 believe that is covered.

25 Again, it is the physical dissemination when I say

1 physical. So the file going, the transcript going, the disc  
2 going. That is what we're concerned about.

3 THE COURT: Why can't it go from lawyer to lawyer?

4 MR. EDELMAN: We would be willing -- we have that  
5 provision --

6 THE COURT: The lawyers have a hard enough job as it  
7 is. Why can't they at least become accommodated, so they can  
8 see the information without their having to be imposed upon  
9 without restriction. I don't understand that.

10 MR. EDELMAN: I guess the only thing is, I'm not  
11 sure why -- not every defendant necessarily gets every single  
12 tape. So if a tape showing one witness goes here, why that  
13 person needs to send that tape -- send that tape to another  
14 lawyer.

15 But I will note, we have that provision for the  
16 broader category of less restrictive material, allowing  
17 sharing amongst defense counsel pursuant to a joint defense  
18 agreement. If that is the sticking point, we can have a  
19 similar provision with respect to the protective order.

20 THE COURT: Why don't we at least do that? All  
21 right? We'll try to make life a little easier for lawyers who  
22 have a hard enough job as it is. Okay? And I don't see that  
23 there is any problem there.

24 So the lawyer-to-lawyer communication will be open,  
25 and we can deem that we're making this on the record here. I

1 don't know that we have to put it in more specific language.  
2 If there is any problem in its implementation, you'll come  
3 back and you'll talk to me, but at least we have accomplished  
4 that. Okay?

5 MR. MAZUREK: Can we get rid of paragraph three? We  
6 want to get rid of that paragraph. Let's get rid of that  
7 paragraph.

8 THE COURT: I'm not getting rid of that paragraph  
9 three.

10 MR. MAZUREK: I'm very happy to go home and begin  
11 the preparation --

12 THE COURT: We're not going to get rid of paragraph  
13 three. So my sense is, we're going to leave it stay at the  
14 present time the way it is, and we'll monitor it as we go  
15 along in the real world. All right?

16 So if you are really overburdened, if you have any  
17 particular problems, you can come back and talk to me about  
18 it.

19 But right now, I don't have a comfort level in  
20 letting the defendants have access and copies of all this  
21 material, because I do agree with Mr. Edelman that there is no  
22 effective control on the dissemination of that material. So  
23 that's my take right now. So you win some and you lose some.  
24 Let's see how it goes.

25 MR. MAZUREK: But with one qualification for that



1 which I think is really important, is that we be able to show  
2 potential witnesses information from those recordings or that  
3 material. Right now, that doesn't -- that's not allowed in  
4 paragraph three.

5 THE COURT: The information that you glean from  
6 reviewing it, you want to be able to share that with potential  
7 witnesses?

8 MR. MAZUREK: Yes. I would like them to listen to a  
9 recording. Tell us, does this refresh your recollection? Did  
10 this happen, for example.

11 THE COURT: Mr. Edelman, they want to be able to  
12 speak to the witnesses and say, "Did you say this? Did you  
13 say that?" I guess, right?

14 MR. EDELMAN: I think that is not barred by the  
15 agreement, saying did you say this, did you do that. What  
16 crosses the line is the playing of the tape for a witness.  
17 Now we're talking about people in the community, other members  
18 and associates of organized crime.

19 THE COURT: Anyway, let me understand. So the  
20 lawyer can say, I made notes here. I think I faithfully have  
21 written down what I heard. This is what I heard. And then  
22 the lawyer can share that with the respect to the witnesses,  
23 but cannot play the actual tape?

24 MR. MAZUREK: That's crazy.

25 MR. EDELMAN: My response --

1 THE COURT: You say it's crazy?

2 MR. MAZUREK: It's crazy.

3 MR. EDELMAN: Can I least respond to Your Honor?

4 THE COURT: Just one second.

5 MR. EDELMAN: Thank you.

6 It's not crazy because then that person -- we're  
7 talking about people on these tapes who are other members and  
8 associates of organized crime. So you're now saying I'm going  
9 to play this tape of a cooperating witness and play it for  
10 this person. That is a line that now that person can  
11 disseminate all throughout the community --

12 THE COURT: So why can't the same thing happen if we  
13 have a very good note-taker, it's on the laptop, those notes,  
14 right? They are very extensive. They can even copy verbatim  
15 what's on the tape, right? Mr. Mazurek could sit on his  
16 laptop, that he has that and he plays it to a witness. What  
17 difference does it make whether he does it that way or whether  
18 the actual tape is played?

19 MR. EDELMAN: Again --

20 THE COURT: Just explain -- I want to see the logic  
21 of it. It's the same substantive thing we're talking about.

22 MR. EDELMAN: I think there's a difference between  
23 hearing and hearing words about that. I think that is the  
24 distinction.

25 I would submit to the extent Your Honor is

1 considering that, at least that witness would have to sign the  
2 protective order and agree to be bound by its terms. If he is  
3 listening to the most sensitive material in this case, at  
4 least that's some level of protection.

5 THE COURT: Well, ask counsel whether he is willing  
6 to do that, but you tell me.

7 MR. SERCARZ: Your Honor, if I may, I would urge the  
8 Court to consider the context in which it should rule just on  
9 this limited request for an expansion of the order.

10 The protective order as a whole says you can't make  
11 use of this material other than for legitimate purposes of  
12 trial preparation, or not even talking about --

13 THE COURT: Talk to me about -- look, you guys here  
14 are gaslighting me. I'm focusing now on something very  
15 specific.

16 Counsel just said they're willing to allow the  
17 witnesses to hear the actual words spoken on the tape if they  
18 sign a protective order.

19 MR. SERCARZ: Me, too. I'm focusing on that, too,  
20 Your Honor.

21 THE COURT: Well, tell me --

22 MR. SERCARZ: There's a marginal difference  
23 between --

24 THE COURT: That's not acceptable? Is that not  
25 acceptable to you, right?

1 MR. SERCARZ: I need to go further, and the reason  
2 is as follows: If I'm interviewing the witness who is on the  
3 other end of the conversation, and I simply say, I took notes  
4 and here's what you said, the witness can greet my comments  
5 with skepticism.

6 But if I can confront the witness with his own words  
7 on a tape recording or in a transcript, I may be able to evoke  
8 a response I would not otherwise receive, and that's the  
9 difference, Your Honor. It goes to our right to prepare the  
10 case for trial, and to confront the witnesses against us.

11 THE COURT: Can't you imitate that voice?

12 MR. SERCARZ: I'm sorry?

13 THE COURT: Can you get a good actor to imitate that  
14 voice?

15 MR. SERCARZ: Your Honor --

16 THE COURT: Ask Mr. Riopelle. He probably has  
17 access to people who could do that.

18 MR. SERCARZ: He would be terrific, Your Honor.  
19 Either that or he would scare them away.

20 THE COURT: All right. Let's get serious about  
21 this. I'm trying to be very focused and be fair to everyone.

22 MR. SERCARZ: I am, too, Your Honor. And I  
23 respectfully submit -- I respectfully submit the Government  
24 has to allow us the latitude to prepare our cases and their  
25 protective order should be, according to law, the least

1 burdensome solution.

2 THE COURT: I respectfully submit that I note that.  
3 You don't have to say that to me.

4 MR. SERCARZ: Okay. May I remind you, we're even  
5 not talking about giving it to a defendant, let alone another  
6 --

7 THE COURT: And may be mentioning having getting  
8 something I was inclined to give you.

9 Mr. Mazurek, do you wish to say anything else?

10 MR. MAZUREK: Yes.

11 Judge, I would agree that the protective order --  
12 what the protective order provides is that the investigator  
13 has to sign that he is not going to disseminate the material.

14 But if we have to ask a witness to sign a protective  
15 order before they talk to us? You know how hard it is to get  
16 witnesses to speak to defense counsel.

17 THE COURT: Yes. I've had difficulty.

18 MR. MAZUREK: It's hard.

19 THE COURT: Focus the issue, Mr. Sercarz. Can we  
20 focus here? I'm getting old. I've got to really work hard  
21 and stay focused --

22 MR. SERCARZ: I'm right behind you.

23 THE COURT: So I can keep would up with your words  
24 of wisdom. Okay?

25 MR. SERCARZ: Yes, Your Honor.

1 THE COURT: The focus issue is whether or not the  
2 witnesses should be allow to hear the tape, rather than to  
3 just have them fully and accurately reported to the witness by  
4 counsel. So it's a very narrow thing.

5 And I'm not so sure there is anything wrong with  
6 letting them listen to it. I mean, you know, otherwise, I  
7 mean, depending upon whether counselor is a good scrivener or  
8 not a good scrivener, whether he gets it down right or not  
9 right and we have all these collateral concerns, there's  
10 nothing like the real deal. I'm inclined to let them do that,  
11 just for that limited purpose.

12 MR. EDELMAN: I still disagree, but I understand,  
13 Your Honor.

14 But if we're doing that, then someone now has heard  
15 the most sensitive information, if that's --

16 THE COURT: Well, I know, but that person's going to  
17 know that information, but in any event, it's just the way in  
18 which it is communicated to them.

19 MR. EDELMAN: I understand, and still submit there  
20 is a difference between saying I heard --

21 THE COURT: I see the difference, but I don't really  
22 see it as a substantive difference that really shakes my  
23 brain, is what I'm saying.

24 MR. EDELMAN: Understood.

25 THE COURT: So let him do that. We'll see how it

1 works. We're going to come back again if there are any  
2 problems. We're here to help you all out.

3 MR. EDELMAN: Are we requiring that witness who  
4 hears this limited information to sign the protective order?

5 THE COURT: Well, I don't think so because I think  
6 it's an imposition on the witness. It's not practical, I  
7 don't think. I don't think it's realistic.

8 But, look, substantively, I'm not disagreeing with  
9 you. I just think that I don't want to put counsel under the  
10 burden of having to worry about getting every word down right  
11 or whether he characterizes it correctly. Let him hear the  
12 real thing.

13 I think we're really arguing, though, over nothing  
14 of substantive significance, though I understand your nuance  
15 argument. So we're going to amend the protective order for  
16 that purpose.

17 MR. EDELMAN: Understood.

18 THE COURT: In all of the cases, it's going to stay  
19 the same for the present time, and then we'll revisit it as  
20 need be in the future. Okay? So we have accomplished that.

21 Now, we have one last thing.

22 MR. COLTON: Your Honor, if I may, just very  
23 briefly.

24 THE COURT: Yes.

25 MR. COLTON: Glenn Colton for Mr. Simonlacaaj.

1           The order also provides that defense counsel and  
2 defense staff can't make copies. I just want to make sure  
3 that if I have a copy and my associate has a copy, that's  
4 okay, but the order says it isn't, and I just want to make  
5 sure.

6           MR. MAZUREK: Can I suggest -- I'm going to rewrite  
7 this thing and submit it to Mr. Edelman, and we'll figure it  
8 out.

9           THE COURT: Talk to each other again. All right?

10          MR. EDELMAN: As we have been willing to do and have  
11 done.

12          THE COURT: Look, we're having a nice conversation  
13 today. We see this is no easy thing. They always require the  
14 judge to balance things out. My understanding is we want to  
15 help counsel out. All right? They have a tough enough time  
16 as it is representing clients in a very difficult case, right?

17          MR. EDELMAN: Understood.

18          THE COURT: So my sense is we try to help counsel as  
19 best as we can without causing any egregious harm to the  
20 interests of the Government.

21                So talk to each other about it and if, you know, you  
22 can accommodate counsel in this new era, where we have laptops  
23 and iPhones and all this other stuff, right?

24                Trying to do -- I think you've got some focus from  
25 my perspective today. We hope it will aid everybody in



1 ongoing discussions. We made some specific rulings today  
2 which we have a record of, and we can't accomplish every  
3 single nuance of many things in one sitting. We have to sort  
4 of phase this in as we go along. After all, we want to  
5 collectively try to be fair to everybody. Okay?

6 MR. EDELMAN: Understood.

7 THE COURT: So far so good? Anybody else want to  
8 talk before we move to the next thing?

9 Mr. Sercarz, you want to say anything else?

10 MR. SERCARZ: No. Thank you for hearing me, Your  
11 Honor.

12 THE COURT: All right. So I have the last  
13 application of Andrew Campos, and I think that his father is  
14 George Campos.

15 They want to have a modification of bail conditions  
16 so the father and son can meet without counsel present. And  
17 apparently, the meeting we're talking about is at Andrew  
18 Campos' home, where he is under home confinement.

19 I guess there are a couple of grandkids around  
20 there?

21 MR. EDELMAN: Yes, Your Honor.

22 THE COURT: How old are the children?

23 MR. EDELMAN: Mr. Mazurek can correct me. I believe  
24 two are in college and two are in late teens.

25 THE COURT: Okay.

1 MR. MAZUREK: (Nods head affirmatively.)

2 THE COURT: So when I look at the record here, a  
3 couple of things strike me. That there is George -- is George  
4 Campos the father?

5 MR. EDELMAN: Yes, Your Honor.

6 THE COURT: He is charged in one count of the  
7 indictment, right?

8 MR. EDELMAN: He is alleged to be a Gambino soldier,  
9 but he is charged in one count.

10 THE COURT: The allegation, broad allegation?

11 MR. EDELMAN: Correct.

12 THE COURT: It's an allegation. I don't know  
13 whether it's true or not. It's an allegation.

14 MR. EDELMAN: Correct.

15 THE COURT: But the one that's concrete is that he's  
16 being charged with an OSHA violation?

17 MR. EDELMAN: Yes, a conspiracy to make false  
18 statements to a obtain OSHA cards fraudulently.

19 THE COURT: Okay. So I'm not, you know, diminishing  
20 the importance of that, but it's not a crime of violence.  
21 It's not extortion. It's not any of the things that we  
22 normally are accustomed to being concerned about. We're not  
23 as worried in terms of the balancing of all of these interests  
24 with an OSHA violation as compared to the others.

25 Now, if it was not an OSHA violation, what would

1 Government's position be about letting him come to visit his  
2 son and his grandchildren?

3           You know, the normal gut reaction is that you like  
4 to support the family for many reasons. And once again, there  
5 is a balance here. I understand the Government's position,  
6 but you have kids involved. And you have to think a little  
7 bit about what's in the best interest of the children, I  
8 think, too.

9           If, you know, people come and the kids see marshals  
10 with them or if they see security people with them, I don't  
11 know what kind of effect it might have upon the development of  
12 these children. I mean, you want it to be, I think, as  
13 natural as it can be in terms of perpetuating and sustaining  
14 the family relationship without causing unreasonable burdens  
15 and hardships on the Government.

16           So that's the general overview I have. I would like  
17 to accommodate that. Father and son relationships are  
18 important, and George was not placed under any restrictions.

19           MR. EDELMAN: Not many. Certain restrictions, but  
20 not many.

21           THE COURT: Not many? Okay.

22           And Andrew has a lot of restrictions, and I really  
23 lowered the boom on him, right? And he's been compliant.

24           Tell me what your real concern is. I mean, if you  
25 are worried about Andrew being an alleged bigshot in the

1 family, being able to use his 72-year-old father as the  
2 conduit to do bad things, how realistic is that?

3 MR. EDELMAN: I submit it is realistic, Your Honor.

4 THE COURT: Really?

5 MR. EDELMAN: The concern is around Andrew Campos  
6 continuing to conduct the affairs of the Gambino crime family.

7 And with his father, it's his father. Absolutely,  
8 we understand that. It's with a fellow Gambino soldier,  
9 Gambino member, which goes a long way in why we --

10 THE COURT: Wait, wait, wait. The father, you are  
11 concerned about that the father would be a natural conduit to  
12 continue the conduct of the family business?

13 MR. EDELMAN: That he can pass messages on behalf of  
14 his son? Yes, Your Honor, we are concerned about that.

15 THE COURT: Well, why can't other people pass  
16 messages as well? These are their four grandchildren. They  
17 have items all over the place. They have access to all sorts  
18 of people who come to visit and without any restraints.

19 MR. EDELMAN: That is why we have requested  
20 Mr. Campos be detained. We are concerned about those as well,  
21 but we're in the spot that we're in, and we have one  
22 co-defendant, fellow Gambino soldier who can pass messages  
23 onto his grandkids.

24 THE COURT: What other evidence do you have that the  
25 father is a Gambino member? You allege it. I know that.

1 MR. EDELMAN: Correct.

2 THE COURT: But I see an OSHA violation.

3 MR. EDELMAN: I understand we have multiple  
4 witnesses who would testify to that as to where --

5 THE COURT: Well, that's for the trial. I know  
6 that.

7 MR. EDELMAN: Understood. That's Mr. George Campos'  
8 status in the crime family.

9 But just as to the point as to the grandchildren,  
10 there's no restriction between George Campos meeting with his  
11 four grandchildren whenever they want, wherever they want at  
12 any time.

13 THE COURT: So let me ask you a dumb question. Why  
14 can't, theoretically, Andrew, this bad person, who hasn't  
15 violated any of his conditions so far and if he does one, he  
16 knows he's facing jail time. He's under a lot of pressure.

17 Why can't he talk to one of his college students and  
18 say when you see papa, will you please give this information  
19 or give him this letter? I'm trying to be realistic here, not  
20 theoretical.

21 MR. EDELMAN: Like Your Honor said, we're in the  
22 situation of balancing risk and factors.

23 THE COURT: Yes.

24 MR. EDELMAN: And the risk of that, we submit, is  
25 relatively low. So we're not going to say he can't see his

1 children. But the risk when you take out the children, and  
2 you go direct from Gambino member to Gambino member, then for  
3 us, that risk becomes too high to warrant the complete  
4 association.

5 And again, we're not talking about marshals or  
6 agents at a home. It would really just be one attorney. So  
7 we're talking about one attorney, if that's what they wanted.  
8 I'm not suggesting that's what --

9 THE COURT: Let me understand what it -- I don't  
10 think they want that even.

11 MR. EDELMAN: I understand.

12 THE COURT: I don't think they want anybody there.

13 We could have people there. The other family  
14 members could be there. This is going to be for purposes of  
15 family occasions? I mean, I would have a hard time. You have  
16 a birthday party. You have a bris. I guess that's not  
17 relevant here -- that the family wanted.

18 I don't see why that should not happen here. I  
19 don't see the risk on those occasions to have communications  
20 to disseminate that we should be concerned about.

21 And if he violates one condition, he'll probably go  
22 back to jail.

23 MR. EDELMAN: I understand, Your Honor.

24 It is so hard to find out whether the conversation  
25 that Mr. Andrew had with George in person, whether it related

1 to the grandkids or related to the social club at their right,  
2 something like that. It is so hard to figure that out. It  
3 would impossible to do so.

4 We have the -- two of the grandchildren don't even  
5 live at home. So they're at college. To the extent that  
6 they're coming home, they can go see their grandfather and  
7 visit him on any occasion.

8 THE COURT: How about a family affair? Birthdays,  
9 you know, Christmas? Thanksgiving?

10 MR. EDELMAN: It's just impossible to monitor -- and  
11 Your Honor let him out on very strict conditions: No  
12 association with co-defendant, no association with members of  
13 organized crime. And this would violate -- as it stands,  
14 would violate --

15 THE COURT: That's exactly my point. I really  
16 imposed enormous restrictions on him, and started the  
17 proceeding by asking you whether there was any problem, and  
18 you will continue to monitor him, right?

19 MR. EDELMAN: I understand. It's been three weeks  
20 since Mr. Mazurek --

21 THE COURT: But if he violates any condition, you  
22 know, whether it's this or something else, he's got problems.  
23 I just don't see him doing that, but maybe I'm having the  
24 wrong reading here.

25 But I would hate to preclude a father and son and

1 family getting together, certainly for family occasions. But  
2 I think that's mean-spirited, under these circumstances, when  
3 he's only charged with -- not only. It's a violation. I get  
4 it. But it's an OSHA violation. It's not sort of a principal  
5 part of your indictment that you have here.

6 And if he was charged with something really more --  
7 what's the right word I'm thinking about -- susceptible to  
8 physical criminal behavior, things of that nature, you know, I  
9 might think differently about it, but he hasn't been. And  
10 there are no restrictions imposed on him. So I'm inclined to  
11 see whether he can -- give him a chance to monitor this thing.

12 Now, we can impose some restrictions. He can see  
13 his family, and I guess the logic thing is that he should see  
14 his family, not just his son.

15 MR. EDELMAN: But there is not restriction over, as  
16 it --

17 THE COURT: At his home. He can come to the home.  
18 His son can be there. He's going to be there when the  
19 children are there. What's wrong with that?

20 MR. EDELMAN: Well, for all the reasons I've stated.

21 THE COURT: No, but I'm not going to allow him to  
22 come to the home just to talk with his son one-on-one. But I  
23 don't want to preclude him from coming to the home for family  
24 occasions when the other two are visiting, things of that  
25 nature. And I think that's a fair balance to start with.



1 MR. EDELMAN: Understood, Your Honor.

2 In that case, we would ask that there be -- if these  
3 are preplanned family events --

4 THE COURT: Let him notify --

5 MR. EDELMAN: Notify Pretrial.

6 THE COURT: Yes.

7 MR. EDELMAN: And we'd also ask if -- again, we're  
8 trying to accomplish that goal to have no other contact. So  
9 no telephonic, no messaging.

10 THE COURT: Well, let's take it one step at a time.

11 Let's notify Pretrial to come and visit the family  
12 next Friday, and the kids are going to be home from college  
13 and the other boys are there.

14 How old are the other kids again?

15 MR. MAZUREK: They're teenagers.

16 THE COURT: And they're not living at home?

17 MR. MAZUREK: Two of the teenagers are living at  
18 home. Two are at home, two are at college.

19 THE COURT: And you know, just let them notify  
20 Pretrial that I want to go see the kids next Tuesday or next  
21 Wednesday. What's wrong with that?

22 MR. WALLENSTEIN: Judge, could you just clarify that  
23 for me? Mr. Campos can go simply by notifying Pretrial,  
24 rather than seeking Pretrial's permission?

25 THE COURT: Well --

1 MR. WALLENSTEIN: In other words, you're giving him  
2 permission? I've just got to tell him.

3 THE COURT: Yes. I think we can start off by  
4 notification. Let's see how that works, how frequently he's  
5 going to do that. Watch it.

6 But he has to say I'm going to, you know, I want to  
7 visit my kids and my grandkids on this particular occasion,  
8 that communication. And we'll start off by giving him a  
9 little bit of human discretion to decide whether he wants to  
10 go see the kids. It's not going to be every -- if I see he  
11 wants to do it everyday, then may be we'll think a little bit  
12 about it. But reasonable accommodations.

13 MR. WALLENSTEIN: My client lives in Dutchess  
14 County. It's a schlep to do it every day.

15 THE COURT: Okay. Does that make sense? I'm trying  
16 to catch the essence of it. It's hard to put these things  
17 down in black and white. But I think that's a fair  
18 compromise. Let's see how it works.

19 MR. EDELMAN: Understood.

20 THE COURT: Okay.

21 MR. WALLENSTEIN: Thank you, Your Honor.

22 THE COURT: Now, is there anything else anybody  
23 else --

24 Ah, I knew I shouldn't have asked this question.  
25 Who wants to talk about it?

1 MR. BOOTH: Your Honor, my client, Mark Kocaj, is on  
2 bail conditions set by Magistrate Bulsara. There was no  
3 restriction on his ability to work. Some co-defendants in  
4 this case have a restriction that they cannot work in the  
5 construction industry. My client, who has worked in that  
6 industry his whole life does not that have restrictions.

7 THE COURT: You want me to impose that restriction?

8 MR. BOOTH: I don't, but I need you to free him up  
9 from the Government. My client has a job opportunity lined up  
10 with a construction company located in the Bronx, where he  
11 wants to go and work. He worked for them in the nineties and  
12 the 2000s.

13 Pretrial Services is giving my client a hard time,  
14 saying you can't work in the construction industry. That's  
15 not correct. I conveyed this to Mr. Edelman, just to make  
16 sure there is no problem there. He has a problem with that.

17 My client needs to work to support his family. His  
18 kids are in college.

19 THE COURT: There is no restriction at the present  
20 time?

21 So Mr. Edelman, what's going on?

22 MR. EDELMAN: Mr. Kocaj was released, over the  
23 Government's objection, on home detention. So the provisions  
24 were, he was going to be home at all times. There was no  
25 contemplation of employment at that time. He was only

1 allowed out for attorney visits, medical visits.

2 THE COURT: He was released by Magistrate Judge  
3 Bulsara?

4 MR. EDELMAN: Correct.

5 THE COURT: Okay. Go ahead.

6 MR. EDELMAN: And that was over our objection.

7 So the issue of employment was not relevant because  
8 he was supposed to be home all the time, absent approval from  
9 Pretrial.

10 So now we're in this circumstance where he wants to  
11 work, and we're not opposed to having Mr. Kocaj work. The  
12 problem is, he is charged in multiple counts, two different  
13 charges -- first of all, he's charged with racketeering -- but  
14 two different fraud-related charges relating to his work in  
15 the construction industry, one of which involves bribery.  
16 He's charged with a payroll tax violation. He's charged in  
17 separate indictments as part of this case with extortion,  
18 extortionate collection of credit, in which Judge Bulsara  
19 heard tapes of Mr. Kocaj making threats to harm people to  
20 collect money.

21 So we're in that context, and Mr. Booth raised the  
22 idea of working at this company -- and I'd rather not go into  
23 all the reasons right now, but we do have concerns about that  
24 company and its connections with organized crime and other  
25 misconduct they may have committed.

1           So if Mr. Kocaj can get work outside of the  
2 construction industry, we're generally amenable to that, but  
3 --

4           THE COURT: He may not be qualified to do anything  
5 other than work in the construction industry.

6           MR. EDELMAN: I understand, Your Honor, but it goes  
7 to the heart of his misconduct in this case.

8           THE COURT: I get it. I get it.

9           Is there any way of monitoring? On the one hand, we  
10 like people to work. On the other hand, you worry whether or  
11 not something untoward could happen as a result of that. So  
12 what could possibly happen if he goes to work that we should  
13 worry about as compared to his not going to work?

14           MR. EDELMAN: A number of things. He can -- he is  
15 in a very similar position to commit the same types of crimes  
16 that he committed that led rise to the charges in this case.  
17 He can, by virtue of this company that -- again, I want to be  
18 a little vague at this point -- has issues. He may be exposed  
19 to further violations. He may be exposed to other associates.

20           THE COURT: He's on home confinement now?

21           MR. EDELMAN: Correct.

22           THE COURT: So he would have to stay at home, and  
23 that would sort of protect the Government from having him  
24 exposed to the outside world?

25           MR. EDELMAN: Correct, Your Honor.

1 THE COURT: All right.

2 MR. EDELMAN: And again, I'd stress that Mr. Kocaj  
3 is charged with a separate indictment with making repeated  
4 threats to collect money -- I should say discussing his  
5 ability to collect money by making threats to others. So  
6 there is an added element here as well.

7 MR. BOOTH: And Your Honor, Judge Bulsara and I  
8 listened to those tapes, and he had no problem releasing the  
9 defendant, and he tore apart those tapes, actually on the  
10 record when he --

11 MR. EDELMAN: Well, I have to -- well, just to  
12 clarify the record, he didn't tear apart any tapes. He  
13 said -- I believe the word he used was, I find these tapes  
14 very "troubling," but given his lack of criminal history, I'm  
15 going to release him, over our objection. And he didn't tear  
16 apart the page and say that they don't say that he made any  
17 threats or anything like that.

18 THE COURT: All right. I'm going to leave that  
19 condition in place for the present time. We can revisit it in  
20 the future.

21 We have accomplished a lot today, and we have  
22 assuaged some of these issues a little bit, and I think it's  
23 enough for today. We can always come back and talk about it  
24 again further. But I think we gone as far as I'm willing to  
25 go today with staging and everything.

1           Now, tell me a little bit more, Mr. Edelman, about  
2 what you have planned in terms of the development of the case  
3 which may be not wind up in a trial.

4           MR. EDELMAN: Sure, Your Honor.

5           So, as to the defendants who have had no issues with  
6 the protective order, I've already disclosed a substantial  
7 amount of Rule 16 to those defendants, and I expect, given  
8 Your Honor's rulings today, will do so to the other defendants  
9 as well.

10          THE COURT: Right.

11          MR. EDELMAN: But there is a very large amount of  
12 discovery in this case. Just as a quick recap for Your Honor,  
13 there are multiple months of wiretaps, oral communications in  
14 an office, multiple cell phones that were searched pursuant to  
15 search warrants, the consensual recordings we detailed, as  
16 well as a lot of documents that go to the heart of this case.

17          So we have begun that production and once we sort  
18 out the rest of the protective order, we'll continue to do so,  
19 and I believe that will allow plea negotiations to the extent  
20 they are going to be fruitful, to happen obviously once  
21 defense has request -- has an ability to listen to the  
22 discovery material.

23          So I believe we are jointly requesting, for once,  
24 that there be -- the next status conference date set a while  
25 out. Everyone is out of custody -- but to allow the discovery

1 productions to go forward and for plea negotiations to  
2 continue, we are requesting a next status conference date of  
3 May 28th at 2:00 p.m.

4 THE COURT: I think I can accommodate that. I think  
5 I'll be here, hopefully, God willing.

6 Is that okay with everybody? Okay.

7 MR. MAZUREK: Yes, Your Honor.

8 THE COURT: Now, anything else you wish to say?

9 MR. EDELMAN: Two points, Your Honor.

10 I want to alert Your Honor to a filing -- of the  
11 intent to make -- which is going to be a *Curcio* motion as to  
12 likely two of the counsel. I don't expect it will require --  
13 we're not going to be seeking disqualification, but just in an  
14 abundance caution, having a waiver for those.

15 THE COURT: You're looking for some waivers? All  
16 right. You'll let me know when you're ready to do that?

17 MR. EDELMAN: Yes, Your Honor.

18 THE COURT: Okay. What else?

19 MR. EDELMAN: The only other provision, is -- and we  
20 did this, I believe in all of the arraignments -- is just  
21 because we're before Your Honor for the first time, to ask  
22 that the case be designated complex in light of all of the  
23 number --

24 THE COURT: I guess we should formally say that. It  
25 is obviously complex litigation. So the speedy trial clock



1 stops running. We don't have to repeat that every time we're  
2 here. Okay?

3 MR. EDELMAN: Thank you, Your Honor.

4 So that's all we have from the Government.

5 THE COURT: Okay. Now, anybody else wish to say  
6 anything now? Everybody's happy with what we've been about to  
7 accomplish in the middle? Okay.

8 I hope everybody walks out of the room a little  
9 happy and a little unhappy.

10 Mr. Sercarz, it's always a joy to see a smiling  
11 face.

12 MR. SERCARZ: Your Honor, may have a one moment?  
13 I'm kind of happy. I just have to talk to Mr. Dietsch.  
14 (Confers with Mr. Dietsch.)

15 MR. WALLENSTEIN: We're always happy to be here,  
16 Judge.

17 THE COURT: Okay, Mr. Sercarz?

18 MR. SERCARZ: I'm happy.

19 THE COURT: All right, folks. Nice to see all of  
20 you, and I have a lot of respect for the professionalism in  
21 this room. We'll see at you at the end of May.

22 MR. EDELMAN: Thank you, Your Honor.

23 MR. MAZUREK: Thank you, Judge.

24 MS. SHARKEY: Thank you, Your Honor.

25 (Proceedings concluded.)